



IAC-FH-AR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/02626/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28 October 2014**

**Decision and Reasons
Promulgated
On 30 October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**MR RAMESH GAUTAM
(No anonymity order made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr S Allen (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This matter comes before me for consideration as to whether or not there is an error of law in the determination by the First-tier Tribunal.

Background

2. The appellant, whose date of birth is 22 December 1981, is a citizen of Nepal. He made an application as a Tier 4 (General) Student which was refused on the grounds that he failed to provide evidence showing that he held the required funds for a period of 28 consecutive days.
3. In a determination before First-tier Tribunal (Judge Wilsher) promulgated on 30 July 2014, the appeal was dismissed on immigration grounds and removal directions made under Section 47 Immigration, Asylum & Nationality Act 2006 were upheld. The Tribunal found that the appellant failed to provide adequate evidence of funds held for the required period of 28 days. The evidence produced by the appellant was a letter from his bank confirming his account held funds as at 13th November 2013.
4. The grounds of appeal for permission argue that the Tribunal erred in law by failing to follow **Rodriguez [2014] EWCA CIV 2** with regard to evidential flexibility.

Permission

5. Permission was granted by First-tier Tribunal Judge Simpson, who considered it arguable that the Tribunal [4] misunderstood **Rodriguez** in that the facts were different. In this instance there was nothing to suggest that this appellant would not have been able to show, by way of bank statements for the relevant period, that he did have the necessary funds available to him for the full 28 day period.

Error of law hearing

6. There was no appearance by or on behalf of the appellant. I had before me a letter (somewhat oddly dated 17 March 2014) but referring to the hearing date, 28 October 2014 at 2.00 pm from the appellant's solicitors Maalik & Co. The letter was, however, faxed on 27 October 2014 and so it would appear that the date was an error. In any event, that letter stated that the firm were without instructions and would not be attending the hearing. I was satisfied that the notice of hearing issued on 26 September 2014 was sent to the appellant at his last known address in Hampshire and to his solicitors. There was no further evidence before me showing any reason why the appellant was unable to attend the hearing and/or any request for an adjournment. Accordingly I decided to proceed to deal with this matter in the absence of the appellant and his representative, in accordance with the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended at Rule 38.
7. I heard brief submissions from Mr Allen who maintained that the determination was entirely sound. There was no evidence to show that either the appellant could succeed under the Rules or for the evidential flexibility policy to be applied. I was invited to dismiss the appeal.

Discussion and Decision

8. I am satisfied that the determination is entirely sustainable and sound. The Tribunal considered the evidence of the letter dated 13th November 2013 from the appellant's bank and found that it was inadequate and did not meet the Rules for maintenance. It further considered whether the evidential flexibility policy was applicable and whether the circumstances met the relevant criteria, and found that none of the factors were applicable. In particular the Tribunal rejected the argument that the documents were in the wrong format. There was no evidence either then or now to show that the funds were held for the period of 28 days . There was no evidence to show the appellant could meet the Tier 4 Rules and/or that he could rectify any claimed omissions or missing documents under paragraph 245AA of the Rules.
9. The finding made that the evidential flexibility policy was not applicable was and remains sound. At the hearing before me no further evidence was adduced or relied on by the appellant to show that he meets the requirements for maintenance under the Rules.

Decision

10. **There is no error of law disclosed in the determination which shall stand.
The appellant's appeal is dismissed.**

Signed

Date 29.10.2014

Deputy Upper Tribunal Judge G A Black

**No fee award
No anonymity order made**

Signed

Date 29.10.2014

Deputy Upper Tribunal Judge G A Black